where the parties have agreed that the award shall be final, *Cervien* v. *Erickson Construction Co.* (Wash. 1917.) 162 Pac. 567, apparently influenced by considerations of expense and expedition, yet the award is only *prima facie* correct and is subject to impeachment. However, an honest mistake of judgment, *Vincent* v. *German Ins. Co.* (1903) 120 Iowa 272, 94 N. W. 458, fact, *Patton* v. *Garrett* (1895) 116 N. C. 847, 21 S. E. 679, or even of law, *Stone* v. *Baldwin* (1907) 226 Ill. 338, 80 N. E. 890, will not generally furnish sufficient basis for overthrowing an award, since that would be substituting the court's judgment for that of the arbitrator's. But, where the arbitrator was found to be a close relative, *Stinson* v. *Davis* (Ky. 1899) 50 S. W. 550, or a stockholder of one of the parties, *Milner* v. *Georgia R. R. & Bank. Co.* (1848) 4 Ga. 385, the award was impeached. Fraud, *Elledge* v. *Polk* (Miss 1909) 48 So. 241, or such gross mistake as to lead to the inference of fraud, *Cornell & Co.* v. *Steele* (1909) 109 Va. 589, 64 S. E. 1038, will certainly cause the court to interfere. It is not necessary that the arbitrator himself be guilty of fraud or bad faith; it is enough that he is fraudulently deceived. *Cornell & Co.* v. *Steele, supra*; *Forrest City Box Co.* v. *Sims* (C. C. A. 1913) 208 Fed. 109. Since the reason for setting aside the award is the obvious injustice otherwise done one of the parties it appears that it is immaterial who is responsible for the deception of the arbitrator and that the court in the principal case properly allowed the plaintiff to recover the sum overpaid.

CONTRACTS—BREACH OF CONTRACT TO LEND MONEY—MEASURE OF DAMAGES.—The defendant, with full knowledge of the plaintiff's financial condition, agreed to make advances to the plaintiff in consideration of the plaintiff depositing with him certain securities. The plaintiff deposited the securities, but the defendant refused to loan the money, and the plaintiff consequently became insolvent. *Held,* the plaintiff was entitled to recover special damages. *Murphy* v. *Hanna* (N. D. 1917) 164 N. W. 32.

The normal rule in cases of breach of a contract to loan money is that unless special damages are alleged and proved recovery is limited to nominal damages; *Gooden* v. *Moses Bros.* (1892) 99 Ala. 230, 13 So. 765; *Lowe* v. *Turpie* (1896) 147 Ind. 652, 675, 47 N. E. 150; the reason for the rule being that, although the plaintiff would have received a certain sum of money were the contract performed, he would immediately have been under a duty to return a similar amount. 2 Sedgwick, Damages (9th ed.) § 622. Since under ordinary circumstances money is always procurable in the open market at the legal rate, where the breach is of an agreement to lend money for a particular length of time, the measure of damages is the difference between the interest at the contract rate and at the rate, not exceeding that fixed by law, which the borrower had to pay in the open market, see *McGee* v. *Wineholt* (1901) 23 Wash. 748, 63 Pac. 571, or else the money necessarily expended in procuring the loan elsewhere. *Holt* v. *United Security Life Ins. & Tr. Co.* (1909) 76 N. J. L. 585, 72 Atl. 301; *Bohemian-American etc. Ass'n* v. *Northern Bank of N. Y.* (Sup. Ct. 1909) 120 N. Y. Supp. 134. But where the money cannot be obtained elsewhere or the plaintiff has been deprived of the opportunity of obtaining it, and the money was to be used for a special purpose known at the time to the lender, the injured party may have compensation for the loss which he has sustained by reason of the breach, so far as that loss was, or ought to have been within the con-

templation of the parties. *Manchester & Oldham Bank* v. *Cook* (1883) 49 L. T. (N. S.) 674; *Heddin* v. *Sneblin* (1907) 126 Mo. App. 478, 104 S. W. 887; *cf.* 14 Columbia Law Rev. 154; but *cf. Bixby-Thierson Lumber Co.* v. *Evans* (1910) 167 Ala. 431, 52 So. 843, second appeal (1911) 174 Ala. 571, 57 So. 39. Since it appears that the plaintiff's resultant damages were within the contemplation of the parties at the time of making the agreement, and that the plaintiff was precluded from obtaining a loan elsewhere, the decision seems sound and in accord with the weight of authority.

CONTRACTS—FORBEARANCE TO RESCIND AS CONSIDERATION FOR THIRD PARTY'S PROMISE.—Defendant, whose daughter was engaged to marry an Italian Count, promised, in consideration of the marriage, to pay the daughter $2,500 annually. The marriage took place, and plaintiff sues as assignee for unpaid installments. *Held,* that the daughter, being a beneficiary, by acting in reliance upon the promise, adopted it and thereby became a joint promisee; that the joint forbearance to rescind the engagement contract was sufficient consideration for defendant's promise. *De Cicco* v. *Schweizer* (1917) 221 N. Y. 431, 117 N. E. 807.

Since parties to an executory contract have a legal right to rescind by mutual consent, Anson, Contracts (8th Am. ed.) 104; see *McCreery* v. *Day* (1890) 119 N. Y. 1, 23 N. E. 198, it would seem that their joint forbearance to rescind involves the surrender of a legal right which constitutes consideration for a third party's promise. Some jurists have suggested that this is true even of forbearance by one party alone to offer or accept rescission. Anson, *op. cit.* 110; *cf.* Williston, "Successive Promises of the Same Performance" 8 Harvard Law Rev. 54 *et seq.* It is doubtful, in the principal case, if such forbearance was the consideration requested. The chief difficulty, however, is in finding that the daughter was a joint promisee. The court relied upon the theory, peculiar to New York, that a beneficiary acquires a right to sue by adopting the promise. *Gifford* v. *Corrigan* (1889) 117 N. Y. 257, 22 N. E. 756; *Clark* v. *Howard* (1896) 150 N. Y. 232, 44 N. E. 695. But a beneficiary is not a joint promisee, and allowing him to sue upon the contract does not make him such. The New York courts have hitherto invoked the adoption theory only to explain the beneficiary's right of action, see *Durnherr* v. *Rau* (1892) 135 N. Y. 219, 32 N. E. 49, and there seems to be no justification for extending its application. It should be noted, moreover, that this doctrine is confined to the group of cases following *Lawrence* v. *Fox* (1859) 20 N. Y. 268, in which the promisor assumes an obligation of the promisee to the beneficiary. See *Litchfield* v. *Flint* (1887) 104 N. Y. 543, 11 N. E. 58; *cf. Todd* v. *Weber* (1884) 95 N. Y. 181; *Little* v. *Banks* (1881) 85 N. Y. 258. Therefore, while the result reached in the principal case may be desirable, the court's reasoning is unsound, and the fiction of adoption was carried to an extreme which, if the decision is followed, will produce absurd consequences. The court apparently felt the weakness of its position, for it supported its decision also upon the ground that in marriage settlements consideration is of minor importance. Seee 7 Columbia Law Rev. 203.

CRIMINAL LAW—FALSE PRETENSES—CONSTRUCTION OF STATUTE—WHAT CONSTITUTES "VALUABLE THING".—Under a statute declaring that a person shall be guilty of cheating who fraudulently obtains from